

Remarks

After careful consideration of the outstanding Office Action, this application has been amended accordingly, and favorable reconsideration on the merits thereof is at this time respectfully requested.

At page 3, paragraph 7 of the outstanding Office Action, the Examiner rejected claims 10 through 34 "under 35 U.S.C. § 112, second paragraph, as being indefinite. " The latter claims have been cancelled and substituted therefor are respective claims 34 through 57. The latter group of claims have been drafted to avoid the Section 112 rejection, and the latter is considered moot.

The Examiner indicated at page 6, paragraph 11 that claims 21 through 33 "would be allowable," and the latter group of claims now appear as new claims 45 through 57. Therefore, the only claims under consideration relative to the Section 103 rejection are claims 34 through 44 corresponding to original claims 10 through 20.

At the bottom of page 5, paragraph 10, the Examiner rejected claims 10 through 20 "under 35 U.S.C. § 102(b)¹ as being anticipated by Magester." In describing the patent to Magester at the top of page 6, the Examiner correctly identified the Magester mixer as including a housing 17, inlet openings 21, 22, etc. The "top wall 18" of the patent was defined by the Examiner as being the "insertion part 18" of original claim 10. The insertion part 18 includes a cylindrical downwardly depending portion which is unnumbered in Figure 2 but is clearly shown projecting into the cylindrical side wall 17 of the nozzle housing 16. A shaft 26 projects through the insertion part 18 and two

¹The undersigned will dismiss the Examiner's Section 102(b) rejection because prior art patent to Magester (3,051,455) does not disclose "each and every element of the claim." (See Stoller v. Ford Motor Co., 18 USPQ2d 1545, 1546.) The "differences" between the claims of record and the latter patent will be apparent in the discussion of Section 103(a).

ducts 12, 13 open into the tubular or cylindrical side wall 17 axially. The latter description is believed a fair reflection of the Magester disclosure, as interpreted by the Examiner and the undersigned. Thus, there ought not be any question as to the scope and content of the prior art "as a whole." Graham v. John Deere Co. of Kansas City, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966). Thus, the only issue is the "differences" between the prior art and the claims at issue. Graham, supra, page 467.

Claim 34 calls for the mixer shaft (38) as including a mixer shaft portion adjacent the inlet openings which carries at least one deflection element (80). The latter structure is housed within the "cylindrical recess (69)" of the insert part (62). Finally, the inlet openings (68, 70) open radially into the recess portion. The latter structure is believed fairly and specifically defined in claim 34 and, for purposes of simplicity, the undersigned has attached hereto a photocopy of Figure 2 in which the recess portion (69) has been outlined in red, the mixer shaft portion and the at least one deflector element in blue, and the inlet openings (68, 70) in orange. As is readily apparent by the lead lines associated with the latter structure in Figure 2, the two pasty substances enter radially into the cylindrical recess and the at least one deflection element (80) therein. By comparing Figure 2 and the limitations just described with respect to claim 34, it is believed the "differences" between the prior art and claim 34 are readily apparent. Most importantly, none of the blades (32) or the upper cup-like portion (24) of the impeller (23) of the Magester patent are received in a non-disclosed cylinder recess of the insertion part (18). Moreover, the inlets (21, 22) direct material axially, not radially. Reference is particularly made to column 5, beginning at line 11 which states:

As the two streams of material flow into the nozzle from inlet lines 12 and 13, they normally fall through the cup 24 into engagement with the rotating impeller blades.

The latter is best visualized in Figures 2 and 4 of the Magester patent, and a photocopy has been attached hereto with the flow direction being indicated by headed

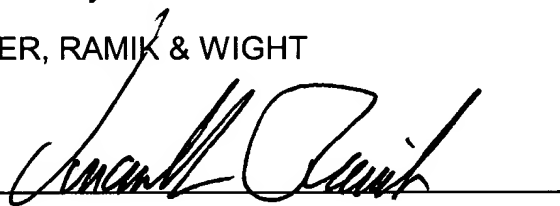
red arrows. As described further at column 5, beginning at line 16, the flow is not only axially downwardly, but subsequently "outwardly to the outer edges 33 of the blades due to the centrifugal forces." Thus, the flow illustrated in Figures 2 and 4 by the headed red arrows is axially downward and radially outward, whereas the flow of applicant's mixing device is radially inwardly, followed by axial flow, completely opposite to that of the Magester patent. Hence, the differences in structure and function are readily apparent and, as such, define clear indicia of nonobviousness. Thus, in keeping with the Section 103 conditions of the Graham, supra decision, the nonobviousness of the subject matter of claim 34 is clearly apparent and the formal allowance of this claim and the claims depending therefrom is considered proper and would be most appreciated.

In view of the foregoing, the formal allowance of this application at an early date would be most appreciated.

Respectfully submitted,

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Attachments Figure 2 of Applicant's drawings in which the recess portion (69) has been outlined in red, the mixer shaft portion and the at least one deflector element in blue, and the inlet openings (68, 70) in orange.

Figures 2 and 4 of the Magester patent with the flow direction being indicated by headed red arrows.

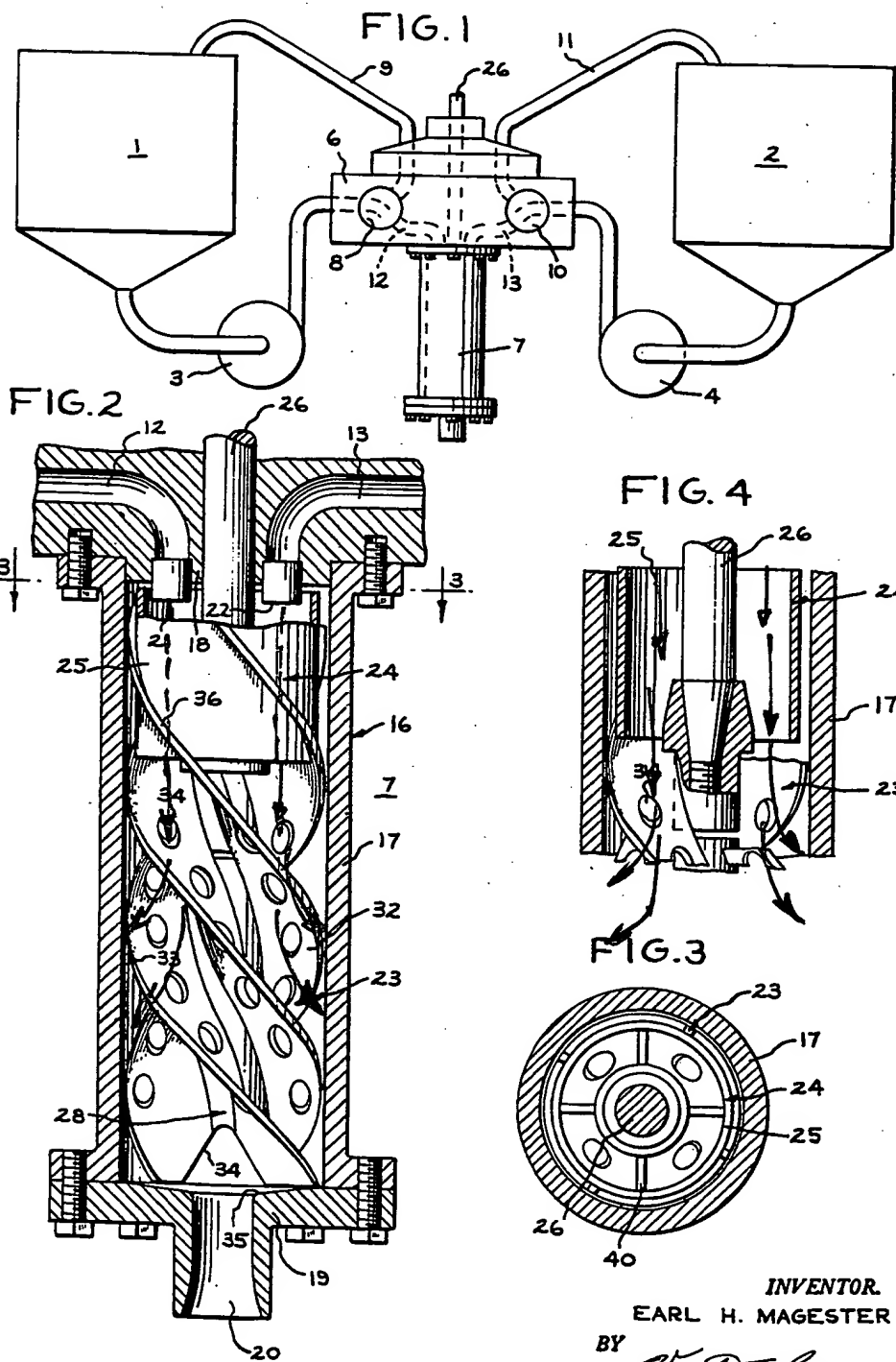
Aug. 28, 1962

E. H. MAGESTER

3,051,455

MIXING NOZZLE

Filed July 25, 1960



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FILE
COPY

FIG.2

